



behalf of the Receiver in the event the Court determines that the claims were not assignable, in which case the Receiver has always owned the claims and can assert them by the proposed Amended Complaint. *See* Plaintiff's Opposed Motion for Leave to File Amended Complaint (Doc. No. 106).

2. Plaintiffs' claims are not barred by New York's *in pari delicto* doctrine because New York law does not apply to Plaintiffs' claims. There is no New York choice of law clause in the Proskauer engagement letter, the Proskauer engagement letter does not incorporate by reference the unsigned Chadbourne engagement letter, and applicable Fifth Circuit law provides that an equity receiver's claims are not barred by *in pari delicto*.
3. The summary judgment evidence submitted by Plaintiffs in support of this Response and Plaintiffs' Brief in Support raises genuine issues of material fact that preclude summary judgment on causation and damages. Plaintiffs' claims are timely filed, and Plaintiffs' damages based upon increased liabilities are not deepening insolvency damages.
4. The summary judgment evidence submitted by Plaintiffs in support of this Response and Plaintiffs' Brief in Support raise genuine issues of material fact that preclude summary judgment on the issue of whether Sjoblom knowingly participated in the Stanford directors' and officers' breaches of fiduciary duty and fraud.
5. The summary judgment evidence submitted by Plaintiffs in support of this Response and Plaintiffs' Brief in Support raises genuine issues of material fact that preclude summary judgment on the issue of whether Sjoblom substantially assisted the Stanford directors' and officers' breaches of fiduciary duty and fraud.
6. Plaintiffs' claims are not barred as a matter of law under Chapter 33 of the Texas Civil Practice & Remedies Code because:
  - Chapter 33 does not apply to claims for aiding and abetting fraud or breach of fiduciary duty;
  - applying Chapter 33 to use the conduct of Stanford to bar the Receiver's claims inappropriately backdoors the inapplicable *in pari delicto* defense;
  - if Chapter 33 does apply to aiding and abetting claims, Proskauer is still jointly and severally liable;
  - if Chapter 33 does apply, the statute provides that it is the trier of fact, not the Court, that determines the percentage of responsibility.

For these reasons, and the reasons set forth in the brief and appendix filed in support of this response, Plaintiffs respectfully request that Proskauer's motion for summary judgment be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This will certify that this Response was served in accordance with the Federal Rules of Civil Procedure via the Court's ECF system.

*Judith R. Blakeway*